

## **PART 3**

### **PROPOSAL INSTRUCTIONS**

# WASHINGTON STATE FERRIES

## M.V. ELWHA PROPULSION CONTROL SYSTEM REPLACEMENT CONTRACT NO. 00-7171

### PROPOSAL INSTRUCTIONS

Parties interested in submitting a proposal for Washington State Ferries' (hereinafter called "WSF") proposed M.V. Elwha Propulsion Control System Replacement Contract (hereinafter called the "Contract") must comply with the following terms and conditions of the Request for Proposals ("RFP"):

#### **1. ALTERNATE PROPOSALS**

A proposer may submit only one (1) proposal for evaluation pursuant to the RFP Proposal Evaluation document.

#### **2. PROPOSAL DUE DATE**

**The closing date for receipt of proposals is 1:00 p.m. on Monday, July 31, 2006. See Section 14, Delivery of Proposals, for additional information regarding the submission of proposals.**

Due to the format of the RFP process, the proposals will not be publicly opened or read. Any proposal received after the Proposal Due Date shall be rejected and returned to the proposer unopened.

#### **3. CORPORATE REGISTRATION**

The laws of the State of Washington require that out-of-state corporations secure authority from the Secretary of State to transact business in the State of Washington. Accordingly, before the state can enter into a contract with an out-of-state or foreign corporation conducting business within the State of Washington, such corporation must comply with Washington's corporation laws. Out-of state or foreign corporations which do not intend to conduct business within the State of Washington may be exempt from such requirements. Consult the Office of the Secretary of State regarding the nature of your intended business, if any, within the State of Washington. Information and application blanks regarding corporate registration may be obtained from the Corporations Division, Office of the Secretary of State,

Olympia, Washington 98504, or online, at  
<http://www.secstate.wa.gov/corps/registration>. The Corporate Information Line is  
(360) 753-7115.

#### 4. ESTABLISHED BUSINESS

To be considered responsive, a proposer must, by the Proposal Due Date, or prior to that time if required by law, be an established business firm with all required licenses, bonding, facilities, equipment and trained personnel necessary to perform the work specified in the RFP. WSF reserves the right to require proof of such compliance within five (5) calendar days from the date of request.

#### 5. RFP PACKAGE AND INTERPRETATION

Copies of the RFP Package may be purchased for the non-refundable fee of \$50.00 each by contacting:

<b><u>Mailing &amp; Pick-up Address</u></b>	<b>(NW Corner of Third and Broad)</b>
Washington State Ferries	
2901 Third Avenue, Ste. 500	Phone: (206) 515-3606 (recording)
Seattle, Washington 98121-3014	Fax: (206) 515-3605

**Attn: Ben Dietz, Legal Services / Contracts Development Mgr.**  
Phone: (206) 515-3607  
Fax: (206) 515-3605  
E-Mail: [dietzbe@wsdot.wa.gov](mailto:dietzbe@wsdot.wa.gov)  
(cc: [mcguigan@wsdot.wa.gov](mailto:mcguigan@wsdot.wa.gov))

To facilitate timely responses, WSF will accept questions during the proposal process only from prospective proposers (i.e., prime contractors). WSF will not accept, and has no obligation to respond to, inquiries from subcontractors or suppliers. Prospective proposers should submit each question by both telefax and e-mail only, to WSF's Legal Services / Contracts Development Manager (see above). Prospective proposers should also send a courtesy copy (cc) of each e-mailed question as indicated above. If there is any discrepancy between the faxed and e-mailed versions of a question, then the faxed version will control. Questions must be submitted soon enough to allow: (i) development and issuance of a written response; and (ii) consideration of the response by all prospective proposers before submission of their proposals.

Additionally, if a prospective proposer requires an explanation, clarification, or interpretation of any part of the Contract Documents, it may submit to the WSF representative a written request for an interpretation thereof. All requests for interpretation are subject to the inquiry limitations specified in the preceding paragraph. WSF will not be responsible for any other explanations or interpretations

1 of the Contract Documents. Oral explanations, interpretation, or instructions given  
2 by anyone before award of the Contract will not be binding on WSF.

3  
4 Any information given to a prospective proposer concerning any of the Contract  
5 Documents will be furnished to all prospective proposers as an RFP Addendum if  
6 WSF deems that information to be necessary in submitting proposals or if WSF  
7 concludes that the lack of the information would be prejudicial to other prospective  
8 proposers.

9  
10 If a submitted question is appropriate for a response in an RFP Addendum, WSF will  
11 not disclose the identity of the prospective proposer who submitted the question. The  
12 re-stated question will be adjusted accordingly in the RFP Addendum.

## 13 14 15 **6. EXAMINATION OF CONTRACT DOCUMENTS AND SITE OF WORK**

16  
17 The proposer shall carefully examine all of the Contract Documents. Submittal of a  
18 proposal shall be conclusive evidence that the proposer has made its examination and  
19 understands all requirements for the performance of the Contract Work. The  
20 proposer further warrants, agrees and acknowledges by submitting a proposal that it:

- 21  
22 A. Has taken steps reasonably necessary to ascertain the nature and scope of the  
23 Contract Work; and understands that failure to do so will not be justification  
24 for a Change Order, protest or claim against WSF;  
25  
26 B. Has investigated and satisfied itself as to the general and local conditions  
27 which can affect the Contract Work or its cost, including but not limited to:  
28  
29 1. Conditions bearing upon design and manufacture, transport,  
30 delivery, on-site engineering support, training and testing regarding  
31 the replacement propulsion control system (PCS);  
32  
33 2. Uncertainties of weather, tides, wind, or similar physical conditions  
34 at the installation and testing site, i.e., in Puget Sound, Washington;  
35 and  
36  
37 3. The character of equipment and facilities needed preliminary to, and  
38 during performance of, the Contract Work;  
39  
40 C. Has satisfied itself as to the adequacy of time allowed for the completion of  
41 the Contract Work;  
42  
43 D. Has not discovered any patent ambiguities, other than those identified in  
44 writing to WSF, that would be discovered by a prudent contractor in preparing  
45 its proposal; and  
46

1 E. Has read, fully understands and intends to sign the Contract, without  
2 modification.  
3

4 Any failure of the proposer to take the actions acknowledged above shall not relieve  
5 the proposer from responsibility of estimating properly the difficulty and cost of  
6 successfully performing the Contract Work, or from proceeding to successfully  
7 perform the Contract Work without additional expense to WSF.  
8

9 The proposer agrees that WSF shall not be liable to it on any claim for additional  
10 payment or additional time or any claim whatsoever if the claim directly or indirectly  
11 results from the proposer's failure to investigate and familiarize itself sufficiently with  
12 the conditions under which the Contract is to be performed.  
13

14 The proposer shall be familiar and comply with all Federal, State, and local laws,  
15 ordinances, and regulations which might affect those engaged in the Contract Work.  
16 WSF will not consider any plea of misunderstanding or ignorance of such  
17 requirements.  
18

19 The proposal prices shall reflect what the proposer anticipates to be the cost of  
20 completing the Contract Work, including methods, materials, labor, and equipment.  
21 **WSF will make no adjustment in the Total Contract Price due to: (i) inflation**  
22 **occurring during the performance of the Contract Work; (ii) foreign currency**  
23 **exchange rates; (iii) project delays in award of this Propulsion Control System**  
24 **Replacement Contract; or (iv) project delays in the award of the shipyard**  
25 **installation contract.**  
26

27 The proposer must project any changes in cost / price during the Contract Time and  
28 include such projection in its proposal prices. Except as the Contract may provide,  
29 the proposer shall receive no payment for any costs that exceed those in the proposal  
30 prices.  
31

32 Prospective proposers are advised that projects with work on or adjacent to water  
33 may require insurance coverage in compliance with:  
34

35 A. The Longshoremen's and Harbor Worker's Compensation Act (administered  
36 by U.S. Department of Labor), and/or  
37

38 B. The State Industrial Insurance (administrated by the Washington State  
39 Department of Labor and Industries).  
40

The Contractor shall bear all cost for such insurance, as provided in: (i) Section 1-07.10, Worker Benefits, of the 2006 Standard Specifications for Road, Bridge and Municipal Construction (English Units), published by the Washington State Department of Transportation; and/or (ii) the Contract. No Claim shall be allowed because of any ambiguity in the Contract if:

A. The proposer discovers an ambiguity but fails to notify WSF; or

B. The proposer failed to discover a patent ambiguity that would be discovered by a reasonably prudent contractor in preparing its proposal.

For an explanation or interpretation of the proposal documents, please refer to the RFP Package and Interpretation Section herein.

## **7. PROPOSAL FORM**

At the request of a proposer, WSF will provide a Financial and Schedule Proposal Form for any project for which the proposer is eligible to submit a proposal. The Financial and Schedule Proposal Form will identify the project. The proposer shall complete spaces on the Financial and Schedule Proposal Form that call for unit prices, extensions, the total proposal price for evaluation and the total proposal price for award, signatures, date, acknowledgment of Addenda, and the proposer's address. The required certifications are included as part of the Financial and Schedule Proposal Form.

## **8. PREPARATION OF PROPOSAL**

Each proposal shall include the Financial and Schedule Proposal Form furnished by WSF and shall be signed by the proposer. WSF will furnish a Financial and Schedule Proposal Form (sample enclosed) to all proposers, to be submitted as part of the proposal. WSF will evaluate such price data, together with the other proposal components, to determine the successful proposer, as described in this document and the RFP Proposal Evaluation document. All prices, dates, acknowledgments, and signatures shall be legibly entered in the spaces provided on the Financial and Schedule Proposal Form, typed or in ink, and without alteration.

A sample Financial and Schedule Proposal Form is enclosed herewith. This sample form is for proposers' guidance only, and is not to be used to submit a proposal, unless otherwise approved in writing by WSF.

Proposals of corporations shall be signed by the officer or officers having authority to sign them. If a proposer is a partnership, the proposal shall be signed by an authorized member of the partnership. When the proposer is a joint venture, the proposal shall be signed by one or more individuals as authorized by the Joint Venture.

1  
2  
3 **9. QUALITY STANDARDS**  
4

5 Product or service specifications in this RFP are solely to describe type and quality,  
6 and not to be restrictive. Trade reference specifications describe the type of known  
7 product that best meets WSF's functional requirements and provides the most  
8 economical use life under WSF operations. So as not to misrepresent the  
9 requirements herein, brands other than those specified will therefore be considered on  
10 the basis of whether they meet the criteria specified in the RFP Technical  
11 Specifications document, Section 4.0, Scope of Supply, under "Or Equal Substitution  
12 Requirements". Failure to submit complete documentation with a proposal, sufficient  
13 to establish products offered as at least equal, will be grounds for rejection of the  
14 proposal. By submittal of a proposal, a proposer is deemed to warrant that the offered  
15 product is at least equal in quality and performance to that specified in this RFP. For  
16 additional information, see the Definitions Article in the RFP Contract document.  
17

18  
19 **10. SALES, USE AND EXCISE TAXES**  
20

21 In accordance with RCW 82.08.0285 and 82.12.0279, Washington State sales or use  
22 taxes shall not be included in any proposal prices since neither sales nor use taxes are  
23 applicable to: (i) sales of ferry vessels to the State of Washington for transportation  
24 within or outside territorial waters; (ii) sales of tangible property which becomes a  
25 component part of such vessels; and (iii) sales or charges for labor or services  
26 rendered in the construction or improving such vessels.  
27

28 WSF will provide any available Exemption Certificates to the successful proposer,  
29 upon request.  
30

31  
32 **11. DISADVANTAGED BUSINESS ENTERPRISES**  
33

34 WSF encourages Disadvantaged Business Enterprise (DBE) participation on this  
35 contract. However, there is no DBE goal established for this Contract.  
36  
37

1 **12. PROPOSAL SECURITY**

2  
3 Each proposal shall be accompanied by Proposal Security in an amount equal to a  
4 minimum of five percent (5%) of the Total Proposal Price for Award, as shown on the  
5 Financial and Schedule Proposal Form. Proposal security shall be in the form of a  
6 certified check, cashier's check, or project Proposal Bond. Checks shall be payable to  
7 Washington State Ferries.

8  
9 The Proposal Security shall be submitted as evidence of good faith and as a guarantee  
10 that, if awarded the Contract, the proposer will execute and deliver the Contract and  
11 provide the required Contract Security.

12  
13 If a project Proposal Bond is selected, it must be submitted on a Proposal Bond form  
14 furnished or approved by WSF and signed by the proposer and its surety. The surety  
15 shall be registered with the Washington State Insurance Commissioner, and the  
16 surety's name shall appear in the current Authorized Insurance Company List in the  
17 State of Washington published by the Office of the Insurance Commissioner. Unless  
18 ineligible for further consideration, all Proposal Security will be held until the  
19 executed Contract and the Contract Security have been provided to WSF. At such  
20 time, all Proposal Security in the form of cash or checks not subject to forfeiture,  
21 including the successful proposer's, shall be returned. Proposal Bonds shall be  
22 returned upon request.

23  
24 Should the successful proposer fail to enter into the enclosed Contract with WSF and  
25 furnish satisfactory Contract Security within the time period specified, the Proposal  
26 Security shall be forfeited as liquidated damages, unless WSF approves a delay in  
27 writing.

28  
29  
30 **13. NONCOLLUSION DECLARATION**

31  
32 When required by Section 112(c) Title 23, United States Code, a declaration shall be  
33 provided certifying that the proposer has not taken part in collusion or other action  
34 that would restrain competitive bidding.

35  
36 The Code of Federal Regulations [23 CFR Part 635.107(i)(I)] requires that: "Each  
37 proposer shall file a sworn or unsworn statement executed by, or on behalf of the  
38 person, firm, association, or corporation submitting the Proposal, certifying that such  
39 persons, firm, association, or corporation has not either directly or indirectly, entered  
40 into any agreement, participated in any collusion, or otherwise taken any action in  
41 restraint of free competitive bidding in connection with the submitted Proposal.  
42 Failure to submit the sworn or unsworn statement as part of the Proposal package will  
43 make the Proposal nonresponsive and not eligible for award consideration". In  
44 addition, 23 CFR Part 635.107(i) requires that WSF provide the form for the  
45 declaration to prospective proposers and that the declaration shall be executed by  
46 such persons, firm, association, or corporation under penalty of perjury under the  
47 laws of the United States.



Therefore, by signing the proposal, the proposer will be deemed to have signed and agreed to the requirements of the Noncollusion Declaration.

#### **14. DELIVERY OF PROPOSALS**

Proposals must be properly addressed and submitted to WSF as follows:

**Mailing & Street Address: (for U.S. mail, express mail and personal delivery)**

**Washington State Ferries  
2901 Third Avenue, Ste. 500  
Seattle, WA 98121-3014  
Attn: Legal Services and Contracts Department**

**RE: M.V. ELWHA PROPULSION CONTROL SYSTEM  
REPLACEMENT CONTRACT**

All proposers are advised that the Contract and Contract Security should **not** be executed at the time of submitting a proposal.

**The closing date for receipt of proposals shall be in accordance with Section 2, "Proposal Due Date", herein.**

#### **15. PROPRIETARY DATA**

Any document(s) or information which a proposer believes is exempt from public disclosure (RCW 42.17.310) shall be clearly identified by the proposer with the words "Proprietary Data" along with a statement of the basis for such claim of exemption. In the alternative, proposers may insert a Proprietary Data Statement at the front of their proposals. A sample Proprietary Data Statement is attached hereto and incorporated herein as Exhibit A.

WSF's sole responsibility shall be limited to maintaining the above data in a secure area and to notify such proposer of any request(s) for disclosure within a period of five (5) years from the award date. Failure to so label such materials, or failure to provide a timely response after notice of request for public disclosure has been given, shall be deemed a waiver by a proposer of any claim that such materials are, in fact, so exempt.

Notwithstanding such limitations, all Proposals Documents (as defined in Article 1 of the Contract) submitted under this RFP process shall be considered confidential until WSF has awarded the Contract.

1 **16. DATA ACCESS**

2  
3 WSF shall be solely responsible for the proposal evaluation process and selection of  
4 the most advantageous proposal. However, to accomplish such task, WSF reserves  
5 the right to utilize the expertise of any of its project consultants on technical issues  
6 relating to the project. Therefore, proposers must allow WSF project consultants  
7 access to all proposal data, or the proposal will be deemed non-responsive and will be  
8 rejected.  
9

10  
11 **17. ALTERATIONS, MISREPRESENTATIONS**

12  
13 Except as otherwise provided herein, proposals which are incomplete, conditioned in  
14 any way, contain alterations or items not called for in the RFP, or which are not in  
15 conformity to the law, will be rejected as non-responsive. Additionally, a proposer  
16 shall not misrepresent its ability to perform the Contract Work, the scope of its  
17 product or service to WSF, its proposal prices, or the proposed milestone dates.  
18 Misrepresentation may be cause for: (i) rejection of a proposal; (ii) cancellation of  
19 Contract award; or (iii) termination of the Contract.  
20

21  
22 **18. WITHDRAWAL OR REVISION OF PROPOSALS**

23  
24 After submitting a proposal to WSF, the proposer may withdraw or revise it if:

- 25  
26 A. The proposer submits a written request signed by an authorized person; and  
27  
28 B. WSF receives the request before the Proposal Due Date.  
29

30 The original proposal may be revised and resubmitted as the official proposal if WSF  
31 receives it before the Proposal Due Date.

1  
2 **19. IRREGULAR PROPOSALS**  
3

- 4 A. A final proposal **may** be considered irregular and **may** be rejected by WSF if:  
5  
6 1. The Financial and Schedule Proposal Form furnished or authorized by  
7 WSF is not used, or is altered;  
8  
9 2. The completed Financial and Schedule Proposal Form contains any  
10 unauthorized additions, deletions, alternative proposals, or conditions;  
11  
12 3. The proposer adds any provisions reserving the right to reject or accept  
13 the award, or enter into the Contract;  
14  
15 4. A price per unit (if applicable) cannot be determined from the proposal;  
16  
17 5. The Financial and Schedule Proposal Form is not properly executed;  
18  
19 6. The proposer fails to submit or properly complete the Financial and  
20 Schedule Proposal Form Attachments; or  
21  
22 7. The proposal does not constitute a definite and unqualified offer to meet  
23 the material terms of the RFP.  
24  
25 8. WSF deems any of the proposal prices to be excessively unbalanced,  
26 either above or below the amount of a reasonable proposal for the item  
27 of work to be performed, to the potential detriment of WSF;  
28  
29 9. Receipt of Addenda is not acknowledged on the Financial and Schedule  
30 Proposal Form;  
31  
32 10. A member of a joint venture and the joint venture both submit proposals  
33 for the same project (in such an instance, both proposals may be  
34 rejected); or  
35  
36 11. Proposal entries are not legibly typed or made in ink.  
37

1  
2 **20. NON-RESPONSIBILITY**  
3

4 A. WSF, at its discretion, **may** reject a proposal if it determines that a proposer is  
5 not responsible for any of the following reasons:  
6

- 7 1. Evidence of collusion with any other proposer or proposers is found.  
8 Participants in such collusion will be disqualified from submitting  
9 proposals on any further work;  
10  
11 2. An unsatisfactory performance record exists based on past or current  
12 WSF or WSDOT work;  
13  
14 3. There is uncompleted work (WSF or otherwise) which might hinder or  
15 prevent the prompt completion of the Contract Work;  
16  
17 4. The proposer fails to pay or settle bills for labor or materials on past or  
18 current contracts;  
19  
20 5. The proposer has failed to complete a written public contract, or has  
21 been convicted of a crime arising from a previous public contract;  
22  
23 6. The proposer is unable, financially or otherwise, to perform the  
24 Contract Work;  
25  
26 7. The proposer is not authorized to do business in the State of  
27 Washington; or  
28  
29 8. There are any other reasons deemed proper by WSF.  
30

31 B. During proposal evaluation, WSF reserves the right to make reasonable  
32 inquiry to determine the responsibility of any proposer. Requests may  
33 include, but are not limited to, financial statements, credit ratings, references,  
34 record of past performance, and on-site inspection of a proposer's facilities.  
35 Failure to respond to such requests will be sufficient reason to consider the  
36 proposal non-responsive.  
37

1  
2 **21. CONSIDERATION OF PROPOSALS**  
3

- 4 A. After reviewing the proposals, WSF will verify the proposals for correctness  
5 of form, compliance with proposal terms set forth herein, and the extensions  
6 and totals of the unit prices (if any). WSF may reject a proposal or disqualify  
7 a proposer for those reasons set forth herein. If a discrepancy exists between  
8 the price per unit and the extended amount of any proposal item, the price per  
9 unit will control. The total of extensions, corrected where necessary, will be  
10 used by WSF for proposal evaluation, and to determine the amount of the  
11 Contract Bond.  
12
- 13 B. WSF reserves the right to: waive informalities in the proposal process, accept  
14 the proposal of the responsible proposer who offers the most advantageous  
15 proposal; reject any or all proposals (see next paragraph); republish the call  
16 for proposals; revise or cancel the Contract Work to be performed; or to do  
17 the Contract Work otherwise, if in its sole judgment, the best interests of WSF  
18 is served thereby.  
19
- 20 C. Proposers are notified that WSF reserves the right to reject any or all  
21 proposals, without cause or for any reason, including rejection where the  
22 lowest responsive and responsible proposal exceeds WSF's good faith  
23 estimate by an unreasonable amount. In the event all proposals are rejected,  
24 the project may be deferred indefinitely for re-advertisement, or otherwise.  
25
- 26 D. A proposer who wishes to claim error after the proposals have been submitted  
27 shall promptly notify WSF that an error occurred. The proposer shall submit  
28 a notarized affidavit or declaration under penalty of perjury signed by the  
29 proposer and accompanied by the work sheets used in the preparation of the  
30 proposal, requesting relief from the responsibilities of award. The affidavit or  
31 declaration shall describe the specific error(s) and certify that the work sheets  
32 are the ones used in preparing the proposal.  
33
- 34 E. The affidavit or declaration shall be submitted no later than 5:00 p.m. on the  
35 first business day after the Proposal Due Date or the claim will not be  
36 considered. WSF will review the affidavit or declaration and the certified  
37 work sheets to determine the validity of the claimed error and if the error is of  
38 the kind for which the law allows relief from forfeiture of the proposal  
39 deposit. If WSF concurs in the claim of error and determines that the error is  
40 of the kind which allows relief from forfeiture, the proposer will be relieved  
41 of responsibility and the proposal deposit of the proposer will be returned. If  
42 WSF does not concur in the error or determines that the error is not the kind  
43 for which the law allows relief, WSF may award the Contract and if the  
44 proposer refuses to execute the Contract, the proposer's proposal deposit shall  
45 be forfeited as liquidated damages.

1  
2 **22. AWARD OF CONTRACT**  
3

4 The successful proposer will be the responsive and responsible proposer who offers  
5 WSF the most advantageous proposal based upon the RFP requirements and the  
6 evaluation criteria.  
7

8 Generally, the successful proposer will be the proposer with the highest total  
9 evaluation score. The proposal evaluation criteria and weighted factors are specified  
10 in the RFP Proposal Evaluation document.  
11

12 Unless all proposals are rejected, WSF intends to award the Contract within thirty  
13 (30) calendar days after the Proposal Due Date; Provided, all proposals shall remain  
14 in effect for ninety (90) calendar days after the Proposal Due Date. Upon mutual  
15 consent of the apparent successful proposer and WSF, this period may be extended.  
16 If the apparent successful proposer and WSF cannot agree on an extension, WSF  
17 reserves the right to award the Contract to the proposer with the next most  
18 advantageous proposal. WSF will notify the successful proposer in writing when it  
19 has been awarded the Contract. WSF shall also notify all other proposers that they  
20 were not selected.  
21

22  
23 **23. EXECUTION OF CONTRACT**  
24

25 A. The successful proposer shall return the signed Contract, and the required  
26 evidence of insurance and Contract Security by the due date specified in the  
27 RFP Schedule.  
28

29 B. Until WSF signs the Contract, no proposer shall bind WSF, nor shall any  
30 Contract work begin. The Contractor shall bear all risks for any Contract  
31 work begun and for any materials ordered before the Contract is signed by  
32 WSF.  
33

34 C. If the proposer experiences circumstances beyond its control that prevents  
35 return of the Contract Documents within the specified number of days after  
36 the award date, WSF may grant additional calendar days for return of the  
37 Documents, provided WSF deems the circumstances warrant it.  
38

1  
2 **24. FAILURE TO EXECUTE CONTRACT**  
3

4 Failure to return approved Contract Security with the signed Contract as required  
5 herein, or failure to provide Disadvantaged, Minority or Women's Business  
6 Enterprise information if required in the Contract, or failure or refusal to sign the  
7 Contract, shall result in forfeiture of the proposal security. If this should occur, WSF  
8 may then award the Contract to a responsive and responsible proposer who offers  
9 WSF the second most advantageous proposal, or reject all remaining proposals. If  
10 such second proposer fails to return the required documents as stated above within  
11 the time provided after award, the Contract may then be awarded successively in like  
12 manner to the remaining next most advantageous proposers until the above  
13 requirements are met or the remaining proposals are rejected.  
14

15  
16 **25. RETURN OF PROPOSAL SECURITY**  
17

18 All Proposal Security will be held until the executed Contract has been provided to  
19 WSF. At such time, all Proposal Security in the form of checks not subject to  
20 forfeiture, including the successful proposer's, shall be returned. Proposal Bonds  
21 shall be returned upon request.  
22

23  
24 **26. PROTEST PROCEDURES**  
25

26 **A. Form and Substance**  
27

28 All protests regarding any contents or portion of this RFP must be submitted  
29 to WSF as soon as possible after the proposer/protestant becomes aware of the  
30 reason(s) for the protest. All protests must be in writing and signed by the  
31 proposer/protestant or an authorized agent. Such writing must state all facts  
32 and arguments on which the proposer/protestant is relying as the basis for its  
33 action. Such proposer/protestant shall also attach, or supply on demand by  
34 WSF, any relevant exhibits referenced in the writing. Copies of all protests  
35 and exhibits shall be mailed or delivered by the proposer/protestant to the  
36 proposer against whom the protest is made (if any) at the same time such  
37 protest and exhibits are submitted to WSF. All protests shall be directed to:  
38

39 Washington State Ferries  
40 2901 Third Avenue , Ste. 500  
41 Seattle, Washington 98121-3014  
42

43 Attn.: Mr. Tim McGuigan  
44 Director of Legal Services and Contracts

45 Phone: (206) 515-3601  
46 Fax: (206) 515-3605

1           **B.     Pre-Selection Protests**

2  
3           To allow sufficient response time, all pre-selection protests (i.e., prior to  
4           WSF's official selection of the successful proposal) must be received by WSF  
5           no later than 3:00 p.m. of the second business day after the Proposal Due  
6           Date. If the protest is mailed after the Proposal Due Date, and before the pre-  
7           selection protest deadline, the proposer / protestant shall immediately notify  
8           WSF's Director, Legal Services and Contracts by telephone, or some other  
9           means of rapid communication, that a protest has been made.

10  
11          WSF shall consider all the facts available to it, and issue a decision in writing  
12          within five (5) business days after receipt of the protest, unless more time is  
13          needed. The proposer / protestant and the proposer(s) against whom the  
14          protest is made will be notified if a longer time is necessary and, if the  
15          additional time required affects the Proposal Due Date or the selection date,  
16          all proposers shall be notified.

17  
18          WSF's decision shall be final and conclusive. Selection of the successful  
19          proposer, if any, will be postponed until after WSF has issued its decision.

20  
21           **C.     Post-Selection Protests**

22  
23          WSF shall immediately notify all unsuccessful proposers of WSF's selection  
24          decision. To allow sufficient response time, all post-selection protests (i.e.  
25          prior to WSF's official award of the successful proposal) must be received by  
26          WSF no later than 3:00 p.m. of the second business day after receipt of a Non-  
27          Selection Notice. If the protest is mailed after such date, and before the post  
28          selection protest deadline, the proposer / protestant shall immediately notify  
29          WSF's Director of Legal Services and Contracts by telephone, or some other  
30          means of rapid communication, that a protest has been made.

31  
32          WSF shall consider all the facts available to it, and issue a decision in writing  
33          within five (5) business days after receipt of the protest, unless more time is  
34          needed. The proposer / protestant and the proposer(s) against whom the  
35          protest is made will be notified if a longer time is necessary and, if the  
36          additional time required affects the Award Date, all proposers will be notified.

37  
38          WSF's decision shall be conclusive unless appeal from it is taken by an  
39          aggrieved firm to the Superior Court of Thurston County within five (5)  
40          calendar days after receiving notice of WSF's selection decision. The court  
41          shall hear any such appeal on WSF's administrative record for the project.  
42          The court may affirm WSF's decision, or it may reverse the decision if it  
43          determines the action of WSF was arbitrary and capricious.

44  
45          Post-selection protests which do not comply with the above-specified  
46          procedures will not be considered.



1  
2 **27. PRE-RFP REPRESENTATIONS**  
3

4 All project information previously provided by WSF to interested parties, whether  
5 verbal or in writing, is superseded by the contents of this RFP and all Addenda  
6 thereto. WSF shall not be liable to any party for (i) any prior representations made by  
7 WSF personnel; or (ii) the contents of any preliminary documents issued prior to this  
8 RFP.  
9

10  
11 **28. PREPARATION COSTS**  
12

13 WSF shall not be liable to any proposer for its proposal preparation costs or any other  
14 direct or indirect costs arising from a response to this RFP.  
15

16  
17 **ADDITIONAL INSTRUCTIONS**  
18

19  
20 **29. DELIVERY SCHEDULE AND MILESTONES**  
21

22 Failure to meet the Delivery Schedule for the PCS, as specified in Exhibit 3 to the  
23 Contract, will subject the Contractor to liquidated damages under the Contract.  
24 Additionally, progress payments to the Contractor will be made only upon  
25 satisfactory achievement of the milestones specified in Exhibit 3 to the Contract.  
26 Please refer to Contract Article 7 for details on payment to the Contractor.  
27

28  
29 **30. CONTRACT**  
30

31 Please note that the Contract for this project shall consist of the following documents  
32 in RFP Part IX: (i) the RFP Contract document; and (ii) applicable sections in  
33 Division 1 of the 2006 Standard Specification For Road, Bridge and Municipal  
34 Construction (English Units), published by the Washington State Department of  
35 Transportation (hereinafter called "Standard Specifications"). The RFP Contract  
36 document shall be the primary document, to be used in conjunction with the Standard  
37 Specifications. To the extent there is any conflict between the two (2) documents, the  
38 RFP Contract document shall control. Note that some terms and conditions in the  
39 Standard Specifications will obviously not apply to the administration of this  
40 Contract (e.g., specific road construction text).  
41

1 **FEDERAL FUNDING CERTIFICATIONS**

2  
3 **30. RESTRICTION ON LOBBYING**

4  
5 **A. INSTRUCTIONS**

- 6  
7 1. The Lobbying Disclosure Act, 2 U.S.C., Section 1601 et seq. prohibits  
8 the use of federal funds to influence federal employees, Members of  
9 Congress, and Congressional staff regarding specific projects.  
10 Further, any person or entity who uses non-federal funds for lobbying  
11 on behalf of specific projects or proposals must submit disclosure  
12 documentation when these efforts are intended to influence the  
13 decisions of federal officials. The provisions apply to grants,  
14 contracts, and cooperative agreements involving \$100,000.00 or more.  
15  
16 2. Accordingly, a Certification titled "Certification Regarding Lobbying"  
17 is below. The Certification applies if the amount of the primary  
18 contract or any subcontract equals or exceeds \$100,000.00. The  
19 Contractor shall ensure that the Certification is included in every such  
20 subcontract and before any such subcontractor commences work on  
21 the project.  
22  
23 3. Please note that a bidder's or a subcontractor's failure to furnish a  
24 Certification may disqualify that person or firm from participating in  
25 the project.  
26  
27 4. The Certification below may be reproduced for compliance with the  
28 subcontractor provisions herein.  
29  
30

31 **B. CERTIFICATION REGARDING LOBBYING**

32 **(Third Party Contracts Over \$100,000).**

33 **By signing and submitting a bid / proposal for this project, the**  
34 **prospective Contractor hereby certifies, to the best of its knowledge and**  
35 **belief, that:**

- 36  
37  
38  
39 1. No Federal appropriated funds have been paid or will be paid, by or on  
40 behalf of the undersigned, to any person for influencing or attempting  
41 to influence an officer or employee of any agency, a Member of  
42 Congress, an officer or employee of Congress, or an employee of a  
43 Member of Congress in connection with the awarding of any Federal  
44 contract, the making of any Federal grant, the making of any Federal  
45 loan, the entering into of any cooperative agreement, and the  
46 extension, continuation, renewal, amendment, or modification of any  
47 Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the prospective Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government Wide Guidance For New Restrictions on Lobbying", 61 Fed. Reg. 1413 (1/19/96)].

3. The prospective Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including Sub-Contractors, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all Sub-Contractors shall certify and disclose accordingly.

This prospective Contractor is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C., Section 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to submit the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. Section 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The prospective Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure (if any). In addition, the prospective Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, et seq., apply to this certification and disclosure (if any).

1  
2 **31. GOVERNMENT – WIDE DEBARMENT AND SUSPENSION**  
3

4 **A. INSTRUCTIONS**  
5

- 6 1. Unless otherwise permitted by law, any person or entity that is  
7 debarred, suspended or voluntarily excluded may not participate in this  
8 federally assisted project, either as a participant or as a principal,  
9 during the period of debarment, suspension, or voluntary exclusion.  
10 To meet this requirement, a certification process has been established  
11 by 49 C.F.R. Part 29.  
12
- 13 2. Accordingly, a Contractor Certification titled “Government-Wide  
14 Debarment and Suspension” is provided below. The Certification  
15 applies if the bidder intends to utilize multiple subcontracts whose  
16 total aggregate value exceeds \$100,000.00. For all other contracts,  
17 and for all subcontractors regardless of contract value, a Subcontractor  
18 Certification form also titled “Government-Wide Debarment and  
19 Suspension”, is provided below. The prospective Contractor shall  
20 ensure that the latter Certification form is included in every project  
21 subcontract.  
22
- 23 3. The inability of a person to provide the required Certification will not  
24 necessarily result in denial of participation in this project. However, a  
25 person that is unable to provide a positive Certification must attach a  
26 complete explanation, as so noted on the Certification.  
27
- 28 4. The Certification of Subcontractors is provided below and must be  
29 included by the Contractor in each and every subcontract, and before  
30 any such subcontractor commences work on the project.  
31
- 32 5. Please note that a bidder's or a subcontractor's failure to agree to  
33 provide a Certification (or an explanation) may disqualify that person  
34 or firm from participating in the project.  
35

1  
2 **B. CERTIFICATION OF CONTRACTOR REGARDING DEBARMENT,**  
3 **SUSPENSION AND OTHER RESPONSIBILITY MATTERS**

4  
5 **(Third Party Contracts Over \$100,000).**

6 **By signing and submitting a bid / proposal, for this project, the**  
7 **prospective Contractor is providing the certification set out below.**

- 8 1. The certification in this clause is a material representation of fact upon  
9 which reliance was placed when this transaction was entered into. If it  
10 is later determined that the prospective Contractor knowingly rendered  
11 an erroneous certification, in addition to other remedies available to  
12 the Federal Government, the State may pursue available remedies,  
13 including suspension and/or debarment.
- 14 2. The prospective Contractor shall provide immediate written notice to  
15 the State if at any time the prospective Contractor learns that its  
16 certification was erroneous when submitted or has become erroneous  
17 by reason of changed circumstances.
- 18 3. The terms "covered transaction," "debarred," "suspended,"  
19 "ineligible," "lower tier covered transaction," "participant," "persons,"  
20 "lower tier covered transaction," "principal," "proposal," and  
21 "voluntarily excluded," as used in this clause, have the meanings set  
22 out in the Definitions and Coverage sections of rules implementing  
23 Executive Order 12549 [49 CFR Part 29]. You may contact the State  
24 for assistance in obtaining a copy of those regulations.
- 25 4. The prospective Contractor agrees by submitting this bid/proposal  
26 that, should the proposed covered transaction be entered into, it shall  
27 not knowingly enter into any lower tier covered transaction with a  
28 person who is debarred, suspended, declared ineligible, or voluntarily  
29 excluded from participation in this covered transaction, unless  
30 authorized in writing by the State.
- 31 5. The prospective Contractor further agrees by submitting this  
32 bid/proposal that it will include the clause titled "Certification  
33 Regarding Debarment, Suspension, Ineligibility and Voluntary  
34 Exclusion - Lower Tier Covered Transaction", without modification,  
35 in all lower tier covered transactions and in all solicitations for lower  
36 tier covered transactions.
- 37 6. A participant in a covered transaction may rely upon a certification of  
38 a prospective participant in a lower tier covered transaction that it is  
39 not debarred, suspended, ineligible, or voluntarily excluded from the  
40 covered transaction, unless it knows that the certification is erroneous.  
41 A participant may decide the method and frequency by which it  
42 determines the eligibility of its principals. Each participant may, but is

not required to, check the Nonprocurement List issued by U.S. General Service Administration.

7. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

8. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, the State may pursue available remedies including suspension and/or debarment.

**C. CERTIFICATION OF CONTRACTOR REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION – PRIMARY COVERED TRANSACTION**

**(Third Party Contracts Over \$100,000).**

1. The prospective Contractor hereby certifies, by submission of this bid / proposal, that neither it nor its “principals” (as defined in 49 CFR 29.105 (p) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. When the prospective Contractor is unable to certify to any of the statements in this certification, such prospective Contractor shall attach an explanation to this bid / proposal.

The prospective Contractor certifies or affirms the truthfulness and accuracy of each statement of its certifications and disclosure (if any). In addition, the prospective Contractor understands and agrees that the provisions of 31 U.S.C. A. 3801, et seq., apply to these certifications and disclosure (if any).

**D. CERTIFICATION OF SUBCONTRACTOR REGARDING  
DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY  
MATTERS**

**(Third Party Contracts Over \$100,000).**

**By signing and submitting a bid / proposal, for this project, the  
prospective lower tier participant is providing the certification set out  
below.**

1. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the State may pursue available remedies, including suspension and/or debarment.
2. The prospective lower tier participant shall provide immediate written notice to the State if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
3. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "lower tier covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact the State for assistance in obtaining a copy of those regulations.
4. The prospective lower tier participant agrees by submitting this bid/proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by the State.
5. The prospective lower tier participant further agrees by submitting this bid/proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
6. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the

covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.

7. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

8. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, the State may pursue available remedies including suspension and/or debarment.

**E. CERTIFICATION OF SUBCONTRACTOR REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

**– LOWER TIER COVERED TRANSACTION**

**(Third Party Contracts Over \$100,000).**

1. The prospective lower tier participant hereby certifies, by submission of this bid / proposal, that neither it nor its “principals” (as defined in 49 CFR 29.105 (p)) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. When the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective lower tier participant shall attach an explanation to this bid / proposal.

The subcontractor certifies or affirms the truthfulness and accuracy of each statement of its certifications and disclosure (if any). In addition, the subcontractor understands and agrees that the provisions of 31 U.S.C. A. 3801, et seq., apply to these certifications and disclosure (if any).

**( END )**



**WASHINGTON STATE FERRIES**

**M.V. ELWHA**

**PROPULSION CONTROL SYSTEM**

**REPLACEMENT CONTRACT**

**PROPOSAL INSTRUCTIONS**

**EXHIBIT A**

**SAMPLE**

**PROPRIETARY DATA STATEMENT**

## **EXHIBIT A**

### **SAMPLE**

### **PROPRIETARY DATA STATEMENT**

1 This proposal contains proprietary financial and other trade secret information that is  
2 exempt from public disclosure by Washington State Ferries (WSF) pursuant to:  
3

4 1. RCW 42.17.310(1)(h), because the proposal contains valuable formulae, designs,  
5 drawings and/or research data and its disclosure would produce private gain and  
6 public loss; and/or  
7

8 2. RCW 42.17.310(1)(m), because the proposal contains financial information  
9 submitted for the purpose of qualifying to submit a bid or proposal for a WSF  
10 construction or repair contract; and/or  
11

12 3. RCW 42.17.260(1), because the proposal contains trade secret formulae, patterns,  
13 compilations, programs, devices, methods and techniques that are protected by the  
14 RCW Chapter 19.108, Uniform Trade Secrets Act.  
15